

400 KAR 4:130. Wild rivers change of use permit procedures.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.990

STATUTORY AUTHORITY: KRS 146.270, 224.01-110, 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 146.270 authorizes the secretary to adopt rules and administrative regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. In such administration, primary emphasis shall be given to protecting aesthetic, ecological, scenic, historic, archaeological and scientific features of the area. Under the provisions of KRS 146.290, the select cutting of timber, a resource removal or an agricultural use may be allowed pursuant to administrative regulations promulgated by the secretary upon the granting of a permit under the other provisions of KRS 146.200 to 146.360; uses which exist at the time the boundaries of a wild river are designated are exempt from this provision. KRS 146.290 requires that any permit granted to conduct a change of use shall contain such restrictions, terms and conditions as are appropriate to protect to the fullest extent possible the stream area and the public trust therein, within the intent of KRS 146.220. This administrative regulation establishes the procedure by which a landowner, as defined in 401 KAR 4:110, may apply to the secretary for a change of use permit to conduct a new land use within a wild river corridor.

Section 1. Applicability. In accordance with KRS 146.290, a new land use activity on state-owned or private lands shall not be undertaken within a wild river corridor until the landowner has obtained a change of use permit from the cabinet. This administrative regulation applies to any landowner applying for a permit to change a land use within a wild river corridor. Nothing herein shall be construed as superseding any requirements of other cabinet programs or of other state or federal agencies.

Section 2. Permit Application. (1) A landowner desiring to commence the select cutting of timber, a resource removal or a new agricultural use on his or her property located within a wild river corridor shall apply to the secretary for a change of use permit on an application form supplied by the cabinet.

(2) The application shall include the name, address and telephone number of the landowner and the operator of the new land use.

(3) The application for removal of a subterranean resource shall include the names and addresses of all applicable surface owners. The applicant shall notify all applicable surface owners at the time application is made for a change of use.

(4) The application shall include a land use plan to consist of:

(a) A U.S. geological survey 7.5 minute topographic map which delineates the exact location and extent of the new use and any access roads being constructed or improved to effect the new use, in relation to all surface waters within the wild river corridor.

(b) The estimated dates of initiation and completion of the new use, where applicable.

(c) An estimate of the total acreage of the new use.

(d) A description of the methods for conducting the new land use including, but not limited to, any construction, excavation, blasting or tree cutting activities.

(e) A description of best management practices for controlling soil erosion and stream sedimentation, maintaining existing water quality, handling of wastes, hazardous substances and excess rock and earth, and preventing and controlling spills and accidents.

(f) A list of herbicides, pesticides, and other chemical products to be used and the planned methods of application and control.

(g) A description of reasonable alternate locations or routes for the land use and why the pro-

posed site was chosen.

(h) A reclamation plan and time schedule which describes procedures for revegetating the affected land, types and locations of plant species to be used, and other measures required under 401 KAR 4:140, Section 14.

(5) The land use plan for underground mining shall include the following additional information:

(a) A second topographic map to scale not greater than one (1) inch equal to 500 feet, prepared, certified and registered by a professional engineer in accordance with the provisions of KRS Chapter 322, which shall delineate control of all surface and groundwater drainage on the site.

(b) Specific provisions for preventing water from entering the mine and for preventing discharges from the mine during and after the mining activity.

(c) A preblasting report, signed by a professional engineer, of the potential for damage from blasting to stream hydrology, including groundwater and subsurface drainage effects, historic structures, significant geologic formations or other significant features located within a wild river corridor.

(d) A dust control plan for the mining area.

(e) Evidence that the operation will not produce or discharge acid water or acid-forming materials.

(f) A copy of the subsidence control plan.

(6) The land use plan for oil and gas production shall include a spill prevention and control countermeasure plan to prevent and control accidental discharges of hazardous substances into surface and groundwaters.

(7) The land use plan for select cutting of timber shall contain the following additional information:

(a) A logging plan or other description of the planned cutting method and procedures for transporting logs and disposing of slash.

(b) The precise location and size of the log landing area(s) and the routing of haul roads.

(c) A timber marking report conducted and signed by a professional forester, indicating species composition, number of trees of each species, total volume and average volume per tree for each species, number of cull trees, and a description of the method used to mark the trees.

(d) A forest management plan developed by a professional forester may be submitted as part of the land use plan to waive the requirement of 401 KAR 4:140, Section 17(5) if it employs the selective method of cutting trees and is otherwise compatible with the purpose and intent of KRS 146.200 to 146.360.

(8) The land use plan for an agricultural use involving livestock or poultry production shall describe a system for storing and disposing of animal wastes and for excluding livestock from buffer zones.

(9) The land use plan for the construction and operation of a public access facility, boat dock, ramp or other recreational facility shall include the following additional information:

(a) Design plans, signed by a registered engineer, showing the layout of all planned facilities, including roads, parking areas, trails and buildings.

(b) Evidence that any structures which would extend into the water will not substantially impede natural stream flow.

(c) A list of all permits applied for to conduct the new land use, as required under KRS Chapter 151 and other applicable state and federal laws.

(d) A waste control and disposal plan, if applicable.

Section 3. Inspection. Within thirty (30) days following receipt of a completed permit application, cabinet personnel will conduct an inspection of the site of the proposed land use change to identify and map the occurrences of significant features and other sensitive areas which may require special protective measures.

Section 4. Public Hearing. (1) Within sixty (60) days following receipt of a completed permit appli-

cation, the secretary, in accordance with KRS 146.290, will hold a public hearing on the application and will notify the applicant of same by certified mail, return receipt requested.

(2) Public notice of the hearing will be given according to the provisions of KRS Chapter 424 and will state the nature and location of the proposed change of use.

(3) At the hearing, any interested party may attend and be represented by counsel and shall be allowed to present evidence as to whether the proposed change of use is consistent with the wild river management plan, the purpose and intent of the Kentucky Wild Rivers Act and other applicable law. The hearing need not conform to the strict rules of evidence as practiced in the courts of the Commonwealth and shall be conducted so as to permit the full development of all relevant issues and to insure that all persons have a fair and reasonable opportunity to be heard.

(4) The hearing shall be recorded, and the application, comments received from the public, and recommendations from government agencies shall be entered into the record. The cost of transcription of the record shall be borne by any party requesting a transcript.

Section 5. Permit Application Review. (1) The secretary shall evaluate all matters on record in light of the provisions of KRS 146.290, and shall further consider:

(a) The possible effects of the proposed new use on water quality, adjacent lands, aesthetics, fish and wildlife, vegetation, geologic features, historical and archaeological sites, recreational values, and endangered and threatened species.

(b) Alternate uses to which the land could be put which would be more consistent with the purposes and intent of KRS 146.200 to KRS 146.360.

(c) Alternate locations, including any outside of the wild river corridor that may be more appropriate for the proposed land use.

(d) The extent to which the proposed change of use or an alternate use conforms to the river management plan developed pursuant to KRS 146.270.

(e) Whether the denial or the issuance of a permit is consistent with the cabinet's mandate to protect the waters of the Commonwealth for the use, welfare and enjoyment of all of its citizens, and with the rights of landowners to the beneficial use of their property.

(f) Any existing laws or administrative regulations which apply generally to the proposed change of use.

(g) Whether the proposed change of use constitutes a threat, directly or indirectly, to public health or safety.

(h) Secondary effects likely to be caused or encouraged by the proposed change of use, such as off-road vehicle use, excessive noise, soil erosion, air or water pollution and economic factors relating to costs of additional facilities or resource protection measures which may be required in the general area in the future as a result, directly or indirectly, of the proposed change of use.

(2) In accordance with KRS 146.290, a written order shall be issued by the secretary within sixty (60) days following the public hearing. The order shall consist of a permit with appropriate standards attached in accordance with 401 KAR 4:140 if the application is approved, specify objections to the application and procedures for appeal if the permit is denied, or recommend an alternate use consistent with the Kentucky Wild Rivers Act. The order shall set forth the finding of fact and conclusion supporting the ruling. The order shall be forwarded to the applicant by certified mail, return receipt requested.

Section 6. Permit Conditions. (1) A permit to conduct a change of use will contain site-specific restrictions, terms and conditions as are appropriate to protect to the fullest extent possible the wild river area and the public trust therein, within the intent of KRS 146.220.

(2) A permit will become effective on the date of issuance and will remain in effect for one (1) year, at which time the permittee shall notify the cabinet in writing as to the status of the new land

use. The permit may be renewed annually upon request by the permittee if the new use has remained consistent with the land use plan submitted and has complied with all permit conditions, the provisions of 401 KAR 4:110 to 4:140 and other applicable laws and administrative regulations.

(3) The landowner to whom a change of use permit is issued shall be held fully accountable for compliance with 401 KAR 4:110 to 4:140 and any additional terms and conditions imposed by the permit.

(4) The permit application and land use plan submitted shall be an instrument for adjudging compliance with the permit. Any changes in the application or land use plan shall require amendment of the permit before such changes are implemented. A permit may be revoked or restricted in the event that the application submitted is found to contain falsified or erroneous information or if conditions of the permit or any of the provisions of 401 KAR 4:110 to 4:140 are violated. Violations shall be subject to penalty as set forth in KRS 146.990.

(5) A change of use permit shall apply to the property for which it was granted and is transferable to any future owner of the property or interest in the property. While the permit is in effect, the permittee shall notify the cabinet of any sale, lease or other transfer of interest in the property to which the change of use applies, and shall make acknowledgment of the permit a condition of the sale, lease or other transfer of interest in the property.

Section 7. Appeal of Secretary's Order. (1) The landowner may file a written objection to the ruling on or before thirty (30) days of the date of its issuance. The written objection shall set forth the basis of the objection and be filed with the Docket Coordinator of the Division of Hearings.

(2) After filing of the written objection, an authorized agent of the secretary shall meet with the landowner and attempt to reach an agreement with respect to a modification of the ruling.

(3) If no agreement is reached within sixty (60) days of filing of the written objection, the secretary shall proceed pursuant to KRS 146.290. (15 Ky.R. 703; Am. 998; eff. 10-26-1988; Recodified from 401 KAR 4:130, 12-21-2017.)